TITLE 41—PUBLIC CONTRACTS

Chap.		Sec.
8.	Federal Grants and Cooperative Agreements [New]	501
9.	Contract Disputes [New]	601

CHAPTER 1—GENERAL PROVISIONS

§ 5. Advertisements for proposals for purchases and contracts for supplies or services for Government departments; application to Government sales and contracts to sell and to Government corporations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5a, 6a, 6a–1, 6b, 252, 260 of this title; title 2 sections 72a, 135a, 475, 604; title 5 sections 3109, 4105, 8709, 8714a, 8902; title 7 sections 87e–1, 427i, 1624; title 8 sections 1252, 1355; title 10 section 2314; title 12 sections 1141b, 1701z–2, 1703, 1710, 1713, 1739, 1747g, 1747k, 1749a, 1750c, 1788, 1827; title 15 sections 634, 2218, 2507, 2609, 2626; title 16 sections 17b, 17i, 343b, 450jj–1, 504, 580c, 590z–3, 594–5, 757, 916*l*, 961, 1052, 2104; title 18 section 4255; title 20 sections 1034, 1070d–1, 2012, 2106; title 21 section 872; title 22 sections 272a, 280b, 280i, 280k, 287e, 287r, 289c, 290b, 295b, 1047, 2103, 2179, 2509; title 23 sections 140, 307; title 24 sections 322, 324; title 28 sections 604, 624, 753; title 29 section 671; title 30 section 556; title 31 section 866; title 33 sections 1123, 1254, 1705; title 38 sections 766, 806, 1820, 4101, 4202, 5022, 5070; title 40 sections 71a, 276a–7, 484, 609, 758; title 42 sections 242k, 242m, 263d, 282, 285, 287b, 289*l*–6, 292f, 295f–4, 295g–9, 295g–10, 296k, 300c–11, 300c–21, 300c–22, 300d–5, 300e–2, 300e–3, 300u, 1395u, 1532, 1543, 1563, 1592d, 1592h, 1870, 2051, 2061, 2063, 2075, 2096, 2210, 2293, 2295, 2310, 2349, 2362, 3211, 3535, 4081, 4082, 4101, 4372, 4585, 6009, 6616, 7403, 7404; title 43 section 1817; title 45 sections 361, 712, 719; title 46 section 1126; title 48 sections 1409b, 1409f, 1409j; title 49 sections 1159, 1638, 1643, 1903, 10364, 10385, 10721; title 50 section 198; title 50 App. section 1918.

§ 10a. American materials required for public use

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10b, 10c, 10d, 42 of this title; title 15 section 2507; title 19 sections 2512, 2513, 2516.

§ 10b. Contracts for public works; specification for use of American materials; blacklisting contractors violating requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10c, 10d, 42 of this title; title 15 section 2507; title 19 sections 2512, 2513, 2516.

§ 10c. Definition of terms used in sections 10a and 10b

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 42 of this title; title 15 section 2507; title 19 sections 2512, 2513, 2516.

§ 10d. Clarification of Congressional intent regarding sections 10a and 10b(a)

EX. ORD. NO. 10582 UNIFORM PROCEDURES FOR DETERMINATIONS

Ex. Ord. No. 10582, Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[*See main edition for text of Secs. 1 and 2*]

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

[*See main edition for text of* (a) *to* (c)]

(d) To reject any bid or offer for materials of foreign origin if such rejection is necessary to protect essential national-security interests after receiving advice with respect thereto from the President or from the Director of the Federal Emergency Management Agency. In providing this advice the Director shall be governed by the principle that exceptions under this section shall be made only upon a clear showing that the payment of a greater differential than the procedures of this section generally prescribe is justified by consideration of national security.

[*See main edition for text of Secs. 4 and 5*]

§ 15. Transfers of contracts; assignments of claims; set-off against assignee

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§ 35. Contracts for materials, etc., exceeding $10,000; representations and stipulations

In any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding $10,000, there shall be included the following representations and stipulations:

[*See main edition for text of* (a) *to* (c)]

(d) That no male person under sixteen years of age and no female person under eighteen

years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract, except that this section, or any other law or Executive order containing similar prohibitions against purchase of goods by the Federal Government, shall not apply to convict labor which satisfies the conditions of section 1761(c) of title 18; and

[*See main edition for text of (e)*]

(As amended Pub. L. 90-351, title I, § 827(b), as added Dec. 27, 1979, Pub. L. 96-157, § 2, 93 Stat. 1215.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 90-351, § 827(b), as added by Pub. L. 96-157, added provisions relating to convict labor which satisfies the conditions of section 1761(c) of title 18.

EXEMPTIONS TO FEDERAL RESTRICTIONS ON MARKETABILITY OF PRISON MADE GOODS

Amendment of this section by Pub. L. 90-351, § 827(b), as added Pub. L. 96-157, not applicable unless representatives of local union central bodies or similar labor union organizations have been consulted prior to the initiation of any project qualifying of any exemption created by such amendment and such paid inmate employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services, see section 827(c) of Pub. L. 90-351, as added Pub. L. 96-157, set out as a note under section 1761 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36, 37, 38, 39, 40, 41, 42, 43, 43a, 44, 45, 258 of this title; title 10 sections 2304, 7299; title 15 section 637; title 39 section 410.

§ 41. "Person" defined in Walsh-Healey provisions

Whenever used in sections 35 to 45 of this title, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11, or receivers.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 326, 92 Stat. 2679.)

AMENDMENTS

1978—Pub. L. 95-598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 46. Committee for Purchase from the Blind and Other Severely Handicapped

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 4—PROCUREMENT PROCEDURES

SUBCHAPTER IV—PROCUREMENT PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 405 of this title; title 5 section 575; title 15 section 205f; title 16 section 793; title 31 section 418; title 40 sections 356a, 474, 602a, 604, 752, 758; title 42 section 1592d; title 43 section 1736; title 44 section 311; title 50 App. section 2393.

§ 251. Declaration of purpose of this subchapter

PROHIBITION AGAINST INFLATIONARY PROCUREMENT POLICIES

For provisions relating to the encouragement of noninflationary pay and price behavior by private industry and labor, and to provide for procurement by executive agencies and military departments of personal property and services at noninflationary prices and wage rates, see Ex. Ord. No. 12092, Nov. 1, 1978, 43 F.R. 51375, set out as a note under section 401 of this title.

§ 252. Purchases and contracts for property

CROSS REFERENCES

Small business concerns, availability of information, see section 637b of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254, 257, 258, 260 of this title; title 22 section 2509; title 38 section 5022; title 40 sections 356, 356a, 604, 752; title 50 sections 1432, 1651.

§ 254. Negotiated contracts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 252, 257 of this title; title 38 section 5022; title 40 sections 604, 752.

CHAPTER 6—SERVICE CONTRACT LABOR STANDARDS

§ 351. Required contract provisions; minimum wages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 352, 353, 357, 358 of this title.

CHAPTER 7—OFFICE OF FEDERAL PROCUREMENT POLICY

Sec.
405a. Uniform Federal procurement regulations and procedures [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 601, 607 of this title; title 40 sections 481, 487.

§ 401. Congressional declaration of policy

It is declared to be the policy of Congress to promote economy, efficiency, and effectiveness in the procurement of property and services by and for the executive branch of the Federal Government by—

(1) promoting the use of full and open competition in the procurement of products and services;

(2) establishing policies, procedures, and practices which will require the Government to acquire property and services of the requi-

site quality and within the time needed at the lowest reasonable cost;

(3) improving the quality, efficiency, economy, and performance of Government procurement organizations and personnel, and eliminating fraud and waste in the procurement process;

(4) avoiding or eliminating unnecessary overlapping or duplication of procurement and related activities;

(5) avoiding or eliminating unnecessary or redundant requirements placed on contractor and Federal procurement officials;

(6) identifying gaps, omissions, or inconsistencies in procurement laws, regulations, and directives and in other laws, regulations, and directives, relating to or affecting procurement;

(7) achieving greater uniformity and simplicity, whenever appropriate, in procurement procedures;

(8) otherwise promoting economy, efficiency, and effectiveness in Government procurement organizations and operation;

(9) coordinating procurement policies and programs of the several departments and agencies;

(10) minimizing possible disruptive effects of Government procurement on particular industries, areas, or occupations;

(11) improving understanding of Government procurement laws and policies within the Government and by organizations and individuals doing business with the Government; and

(12) promoting fair dealing and equitable relationships among the parties in Government contracting.

(As amended Pub. L. 96–83, § 2, Oct. 10, 1979, 93 Stat. 648.)

AMENDMENTS

1979—Pub. L. 96–83 added cl. (1), redesignated former cl. (1) as (2) and as so redesignated, struck out provisions relating to utilization of competitive procurement methods, redesignated former cl. (2) as (3) and, as so redesignated, added provisions relating to the elimination of fraud and waste, and redesignated former cls. (3) to (6) as (4) to (7), (7) to (10) as (9) to (12), and (11) as (8).

EFFECTIVE DATE OF 1979 AMENDMENT

Section 12 of Pub. L. 96–83 provided that: "Except to the extent otherwise provided therein, the amendments made by this Act [see Short Title of 1979 Amendment note below] shall take effect on October 1, 1979."

SHORT TITLE OF 1979 AMENDMENT

Section 1(a) of Pub. L. 96–83 provided that: "This Act [amending sections 401, 403, 405, 407, and 409 to 412 of this title, and sections 474, 481, and 487 of Title 40, Public Buildings, Property and Works, and enacting provisions set out as notes under sections 401 and 405a of this title] may be cited as the 'Office of Federal Procurement Policy Act Amendments of 1979'."

EX. ORD. NO. 12073. FEDERAL PROCUREMENT IN LABOR SURPLUS AREAS

Ex. Ord. No. 12073, Aug. 16, 1978, 43 F.R. 36873, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to strengthen the economic base of our Nation, it is hereby ordered as follows:

1-1. PROCUREMENTS IN LABOR SURPLUS AREAS

1-101. Executive agencies shall emphasize procurement set-asides in labor surplus areas in order to strengthen our Nation's economy.

1-102. Labor surplus area procurements shall be consistent with this Order and, to the extent funds are available, the priorities of Section 15 of the Small Business Act, as amended by Public Law 95–89 (15 U.S.C. 644).

1-2. ADMINISTRATOR OF GENERAL SERVICES

1-201. The Administrator shall coordinate with and advise State and local officials with regard to Federal efforts to encourage procurements in labor surplus areas with the aim of fostering economic development in labor surplus areas.

1-202. The Administrator shall establish specific labor surplus area procurement targets for Executive agencies in consultation with the heads of those agencies.

1-203. In cooperation with the heads of Executive agencies, the Administrator shall encourage the use of set-asides or other appropriate methods for meeting procurement targets in labor surplus areas.

1-204. The Administrator shall report every six months to the President on the progress of the agencies in achieving the procurement targets.

1-3. AGENCY RESPONSIBILITIES

1-301. The Secretary of Labor shall classify and designate labor markets which are labor surplus areas. The Secretary shall provide labor market data to the heads of agencies and State and local officials in order to promote the development of business opportunities in labor surplus areas.

1-302. The heads of Executive agencies shall cooperate with the Administrator in carrying out his responsibilities for labor surplus area programs and shall provide the information necessary for setting procurement targets and recording achievement. They shall keep the Administrator informed of plans and programs which affect labor surplus procurements, with particular attention to opportunities for minority firms.

1-303. In accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), the Administrator for Federal Procurement Policy shall be responsible for the overall direction and oversight of the policies affecting procurement programs for labor surplus areas.

JIMMY CARTER.

EX. ORD. NO. 12092. PROHIBITION AGAINST INFLATIONARY PROCUREMENT PRACTICES

Ex. Ord. No. 12092, Nov. 1, 1978, 43 F.R. 51375, as amended by Ex. Ord. No. 12161, Sept. 28, 1979, 44 F.R. 56663, provided:

By the authority vested in me as President and as Commander in Chief of the Armed Forces by the Constitution and statutes of the United States of America, including Sections 2(c) and 3(a) of the Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904 note) and Section 205(a) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(a)), and in order to encourage noninflationary pay and price behavior by private industry and labor, and to provide for the procurement by Executive agencies and Military Departments of personal property and services at prices and wage rates which are noninflationary, it is hereby ordered as follows:

1-101. The Chairman of the Council on Wage and Price Stability shall:

(a) Monitor company pay and price practices in order to determine compliance with the standards set forth in Section 1-102 of this Order;

(b) Promulgate regulations and guidance to further define these standards, and provide for appropriate exemptions and exceptions;

(c) Publish, or cause to be published, in accordance with procedures designed to ensure fairness and due process, the names of individuals or companies which are not in compliance with the standards;

(d) Promulgate procedures to be used in proceedings before the Council on matters pertaining to the standards, and take such other action as may be necessary and consistent with the purposes of this Section.

1-102. Anti-inflationary wage and price behavior shall be measured by the following standards:

(a) For prices, anti-inflationary price behavior of a company is a current rate of average price increase no greater than its historical rate of price increase during 1976-1977, except where the company experiences uncontrollable increases in the prices of the goods and services it buys, and subject to the provisions of paragraphs (c) and (d).

(b) For pay, anti-inflationary pay behavior is the holding of pay increases to not more than 7 percent annually above their recent historical levels, subject to the provisions of paragraphs (c) and (d).

(c) These standards, which shall be further defined or modified by the Chairman of the Council on Wage and Price Stability, shall be subject to limitations and exceptions as determined by the Chairman and shall be administered so as to take into account any inequities that may have been created by the standards during the past year.

(d) The Council is directed to reconstitute in accordance with the Federal Advisory Committee Act, as amended [5 U.S.C. App.] a Pay Advisory Committee and a Price Advisory Committee in order to provide greater participation by the public in the anti-inflation program. The Pay Advisory Committee and the Price Advisory Committee will advise the Council on developing policies that encourage anti-inflationary pay and price behavior by private industry, employers, and labor, that decelerate the rate of inflation and that provide for a fair and equitable distribution of the burden of restraint. To the extent permitted by law, the Council is directed to provide the Pay and Price Advisory Committees with all information required to perform their duties.

1-103. In order to ensure economy and efficiency in government procurement, the head of each Executive agency and Military Department shall ensure that their contracts incorporate, on and after January 1, 1979, a clause which requires compliance by the contractor, and by his subcontractors and suppliers, with the standards set forth in Section 1-102 of this Order.

1-104. Each Executive agency and each Military Department shall comply with the directions of the Administrator for Federal Procurement Policy, who, in accord with Section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405), shall be responsible for the overall direction of the implementation of Section 1-103 including the issuance of regulations and procedures for determining exceptions and granting exemptions.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 405 of this title.

§ 403. Definition

(a) As used in this chapter, the term "executive agency" means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1), respectively, of title 5, and also a wholly owned Government corporation within the meaning of section 846 of title 31.

(b) As used in this chapter, the term "procurement" includes all stages of the acquisition process, beginning with the process for determining a need for property and services through to the Federal Government's disposition of such property and services.

(As amended Pub. L. 96-83, § 3, Oct. 10, 1979, 93 Stat. 649.)

AMENDMENTS

1979—Pub. L. 96-83 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-83 effective Oct. 1, 1979, see section 12 of Pub. L. 96-83, set out as an Effective Date of 1979 Amendment note under section 401 of this title.

§ 405. Authority and functions of the Administrator

(a) Development and implementation of procurement policies and program coordination for personnel performance improvement

The Administrator shall provide overall leadership in the development and implementation of procurement policies and the coordination of programs to improve the quality and performance of procurement personnel. The Administrator shall develop for submission under section 407(a) of this title a uniform procurement system which shall, to the extent he considers appropriate and with due regard to the program activities of the executive agencies, include uniform policies, regulations, procedures, and forms to be followed by executive agencies—

(1) in the procurement of—

(A) property other than real property in being;

(B) services, including research and development; and

(C) construction, alteration, repair, or maintenance of real property; and

(2) in providing for procurement by recipients of Federal grants or assistance of items specified in clauses (1)(A), (1)(B), and (1)(C) of this subsection, to the extent required for performance of Federal grant or assistance programs.

(b) Inapplicability of such directions and regulations to recipients of Federal grants

Nothing in subsection (a)(2) of this section shall be construed—

[*See main edition for text of (1)*]

(2) to authorize any action by recipients contrary to State and local laws, in the case of programs to provide Federal grants or assistance to States and political subdivisions.

(c) Development and proposal of a central management system; components and functions of system

The Administrator shall develop and propose a central management system consisting of the Office of Management and Budget, the General Services Administration, and procurement offices in executive agencies to implement and enforce the uniform procurement system described in subsection (a) of this section.

(d) Review, development, etc., of procurement policies, regulations, procedures, and forms, procurement data, procurement personnel, and procurement contracts

The functions of the Administrator shall include—

(1) reviewing the recommendations of the Commission on Government Procurement to determine those recommendations that should be completed, amended, or rejected, and to propose the priority and schedules for completing the remaining recommendations;

(2) developing a system of simplified and uniform procurement policies, regulations, procedures, and forms;

(3) establishing criteria and procedures for an effective and timely method of soliciting the viewpoints of interested parties in the development of procurement policies, regulations, procedures, and forms;

(4) promoting and conducting research in procurement policies, regulations, procedures, and forms, through the Federal Acquisition Institute, which shall be located within the Office and directed by the Administrator;

(5) establish, through the Federal Procurement Data Center, which shall be located in the General Services Administration and acting as executive agent for the Administrator, a computer-based information system for collecting, developing, and disseminating procurement data which takes into account the needs of the Congress, the executive branch, and the private sector;

(6) recommending and promoting, through the Federal Acquisition Institute, programs of the Office of Personnel Management and executive agencies for recruitment, training, career development, and performance evaluation of procurement personnel;

(7) developing, for inclusion in the uniform procurement system to be submitted under section 407(a) of this title, standard contracts and contract language in order to reduce the Government's cost of procuring goods and services as well as the private sector's cost of doing business with the Government; and

(8) providing leadership and coordination in the formulation of executive branch positions on legislation relating to procurement.

(e) Consultation, etc., with executive agencies

In the development and implementation of the uniform procurement system the Administrator shall consult with the executive agencies affected, including the Small Business Administration and other executive agencies promulgating policies, regulations, procedures and forms affecting procurement. To the extent feasible, the Administrator may designate an executive agency or agencies, establish interagency committees, or otherwise use agency representatives or personnel to solicit the views and the agreement, so far as possible, of executive agencies affected on significant changes in policies, regulations, procedures and forms.

[See main edition for text of (f) and (g)]

(h) Issuance of interim policy directives to promote development and implementation of uniform procurement system, etc.; compliance by executive agencies with directives

(1) Until the effective date of legislation implementing a uniform procurement system, the Administrator may, with the concurrence of the Director of the Office of Management and Budget, issue policy directives, in accordance with existing law, for the purpose of promoting the development and implementation of the uniform procurement system or for the purpose of promoting the policies set forth in paragraphs (1) through (8) of section 401 of this title. Such policy directives shall be followed by executive agencies.

(2) Any policy directives issued pursuant to paragraph (1) may require executive agencies to issue implementing regulations which shall be in accord with the criteria and standards set forth in such policy directives.

(i) Interim authority of Director of Office of Management and Budget to deny or rescind promulgation of final agency rule or regulation relating to procurement

Until the effective date of legislation implementing a uniform procurement system, the Director of the Office of Management and Budget shall deny or rescind the promulgation of any final rule or regulation of any executive agency relating to procurement if the Director determines that such rule or regulation is inconsistent with the policies set forth in paragraphs (1) through (8) of section 401 of this title or is inconsistent with any policy directives issued pursuant to subsection (h) of this section.

(j) Other statutory, etc., authorities and responsibilities unaffected

Nothing in this chapter shall be construed—

(1) to impair or affect the authorities or responsibilities conferred by the Federal Property and Administrative Services Act of 1949 [41 U.S.C. 251 et seq.] with respect to the procurement of automatic data processing and telecommunications equipment and services or of real property; or

(2) to limit the current authorities and responsibilities of the Director of the Office of Management and Budget.

(As amended Pub. L. 96-83, § 4, Oct. 10, 1979, 93 Stat. 649.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (f), (g), and (j), read in the original, this Act, meaning Pub. L. 93-400, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (j), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of the Act relating to contracts are classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40, Public Buildings, Property, and Works, and Tables.

CODIFICATION

Subsec. (b)(2) is set out in the supplement to correct typographical error in the main edition.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–83, § 4(a), substituted provisions setting forth the responsibilities of the Administrator with respect to the development and implementation of procurement policies, the coordination of programs to improve the quality and performance of personnel, and the development of a uniform procurement system, for provisions setting forth responsibility of the Administrator for overall direction of procurement policy, and functions with respect to issuance of policy, regulations, procedures, and forms.

Subsec. (c). Pub. L. 96–83, § 4(b), substituted provisions relating to development and proposal of a central management system, for provisions setting forth limitation of authority to procurement from appropriated funds and provisions relating to a study and report of procurement from nonappropriated funds.

Subsec. (d). Pub. L. 96–83, § 4(c), substituted provisions setting forth the review, development, etc., functions of the Administrator with respect to procurement policies, regulations, procedures, and forms, procurement data, procurement personnel, and procurement contracts, for provisions setting forth the establishment, monitoring, etc., functions of the Administrator with respect to uniform procurement regulations, procurement policies, regulations, procedures, and forms, procurement data, and procurement personnel.

Subsec. (e). Pub. L. 96–83, § 4(d), substituted provisions relating to consultation functions of the Administrator with respect to the development and implementation of the uniform procurement system, for provisions relating to the consultation functions of the Administrator with respect to the development of policies, regulations, procedures and forms to be authorized or prescribed by such Administrator.

Subsecs. (h) to (j). Pub. L. 96–83, § 4(e), added subsecs. (h) to (j).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–83 effective Oct. 1, 1979, see section 12 of Pub. L. 96–83, set out as an Effective Date of 1979 Amendment note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 407, 408, 409 of this title.

§ 405a. Uniform Federal procurement regulations and procedures

The Administrator of the Office of Federal Procurement Policy is authorized and directed, pursuant to the authority conferred by this chapter and subject to the procedures set forth in such chapter, to promulgate a single, simplified, uniform Federal procurement regulation and to establish procedures for insuring compliance with such provisions by all Federal agencies. In formulating such regulations and procedures the Administrator of the Office of Federal Procurement Policy shall, in consultation with the Small Business Administration, conduct analyses of the impact on small business concerns resulting from revised procurement regulations, and incorporate into revised procurement regulations simplified bidding, contract performance, and contract administration procedures for small business concerns.

(Pub. L. 95–507, title II, § 222, Oct. 24, 1978, 92 Stat. 1771.)

REFERENCES IN TEXT

"This chapter" and "such chapter", referred to in text, read in the original, "Public Law 93–400" and "such Public Law", respectively, which Public Law is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Office of Federal Procurement Policy Act, which comprises this chapter.

SUPERSEDURE OF INCONSISTENT STATUTORY PROVISIONS

Pub. L. 96–83, § 11, Oct. 10, 1979, 93 Stat. 652, provided that: "The provisions of the Act [Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, see Short Title note set out under section 401 of this title] as amended by this Act [see Short Title of 1979 Amendment note set out under section 401 of this title] shall supersede the provisions of section 222 of the Act of October 24, 1978, entitled 'An Act to amend the Small Business Act and the Small Business Investment Act of 1958' (41 U.S.C. 405a) to the extent they are inconsistent therewith."

DEFINITIONS

The definitions in section 637c of Title 15, Commerce and Trade, apply to terms appearing in this section.

§ 407. Responsiveness to Congress

(a) Annual reports on activities; proposals for uniform procurement system, etc.

(1) The Administrator shall keep the Congress and its duly authorized committees fully and currently informed of the major activities of the Office of Federal Procurement Policy, and shall submit a report thereon to the House of Representatives and the Senate annually and at such other times as may be necessary for this purpose.

(2) At the earliest practicable date, but in no event later than one year after October 10, 1979, the Administrator shall transmit to the House of Representatives and the Senate his proposal for a uniform procurement system. Such proposal shall include a full description of the proposed system, projected costs and benefits of the system as proposed, and short- and long-term plans for implementation of the system, including schedules for implementation. At the same time, the Administrator shall transmit a report on the recommendations of the Commission on Government Procurement specified in section 405(d)(1) of this title.

(3) At the earliest practicable date, but in no event later than one year after presentation of the proposal described in paragraph (2) of this subsection, the Administrator shall propose to the House of Representatives and the Senate recommended changes in legislation relating to procurement by executive agencies. If the Administrator deems it necessary, these recommendations shall include a proposal for a consolidated statutory base for procurement by executive agencies.

(4) At the earliest practicable date, but in no event later than the submission of the legislative recommendations described in paragraph (3) of this subsection, the Administrator shall present a proposal for a management system described in section 405(c) of this title to implement and enforce the uniform procurement system.

(b) Submission of policy matter to Congressional committees

At least 30 days prior to the effective date of any policy prescribed under section 405(h) of this title, the Administrator shall transmit to the Committees on Government Operations of the House of Representatives and of the Senate a detailed report on the proposed policy. Such report shall include—

(1) a full description of the policy;

(2) a summary of the reasons for the issuance of such policy; and

(3) the names and positions of employees of the Office who will be made available, prior to such effective date, for full consultation with such Committees regarding such policy.

(c) Waiver of notice requirement by President

In the case of an emergency, the President may waive the notice requirement of subsection (b) of this section by submitting in writing to the Congress his reasons therefor at the earliest practicable date on or before the effective date of any policy.

(As amended Pub. L. 96–83, § 5, Oct. 10, 1979, 93 Stat. 651.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–83, § 5(a), designated existing provisions as par. (1) and, as so designated, struck out references to President of the Senate and Speaker of the House, and provisions requiring the report to contain appropriate legislative recommendations, and added pars. (2) to (4).

Subsec. (b). Pub. L. 96–83, § 5(b)(1), (2), substituted "any policy prescribed under section 405(h)" for "any major policy or regulation prescribed under section 405(a), and "policy" for "policy or regulation" wherever appearing therein.

Subsec. (c). Pub. L. 96–83, § 5(b)(3), substituted "policy" for "major policy or regulation".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–83 effective Oct. 1, 1979, see section 12 of Pub. L. 96–83, set out as an Effective Date of 1979 Amendment note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 405 of this title.

§ 409. Effect on existing regulations

Procurement policies, regulations, procedures, or forms in effect as of October 10, 1979, shall continue in effect, as modified from time to time by the issuing offices on their own initiative or in response to policy directives issued under section 405(h) of this title until repealed, amended, or superseded pursuant to the adoption of the uniform procurement system described in section 405 of this title.

(As amended Pub. L. 96–83, § 6, Oct. 10, 1979, 93 Stat. 651.)

AMENDMENTS

1979—Pub. L. 96–83 substituted provisions setting forth applicability of procurement policies, etc., as of Oct. 10, 1979, for provisions setting forth applicability of procurement policies, etc., as of Aug. 30, 1974.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–83 effective Oct. 1, 1979, see section 12 of Pub. L. 96–83, set out as an Effective Date of 1979 Amendment note under section 401 of this title.

§ 410. Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this chapter, and for no other purpose, $4,000,000 for the fiscal year ending September 30, 1980, and for each of the three succeeding fiscal years; and one-third of the funds appropriated for any such fiscal year shall be made available to the Federal Acquisition Institute for the performance of its functions under this chapter. Any subsequent legislation to authorize appropriations to carry out the purposes of this chapter shall be referred in the Senate to the Committee on Governmental Affairs.

(As amended Pub. L. 96–83, § 7, Oct. 10, 1979, 93 Stat. 651.)

AMENDMENTS

1979—Pub. L. 96–83 substituted provisions authorizing appropriations of $4,000,000 for the fiscal year ending Sept. 30, 1980, and for each of the three succeeding fiscal years, such funds not to be used for any other purpose, with one-third of the appropriations to be made available to the Federal Acquisition Institute, for provisions authorizing appropriations of not to exceed $2,000,000 for the fiscal year ending June 30, 1975, of which not to exceed $150,000 was to be available for the purposes of former section 405(d)(4) of this title, and such other sums as necessary for each of the four fiscal years thereafter, and substituted "Governmental Affairs" for "Government Operations".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–83 effective Oct. 1, 1979, see section 12 of Pub. L. 96–83, set out as an Effective Date of 1979 Amendment note under section 401 of this title.

§ 411. Delegation of authority by Administrator

(a) The Administrator may delegate, and authorize successive redelegations of, any authority, function, or power under this chapter, other than his basic authority to provide overall leadership in the development of Federal procurement policy, to any other executive agency with the consent of such agency or at the direction of the President.

[*See main edition for text of* (b)]

(As amended Pub. L. 96–83, § 8, Oct. 10, 1979, 93 Stat. 652.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–83 substituted provisions respecting delegation of the leadership role in the development of policy, for provisions respecting delegation of the direction of policy and the authority to prescribe rules and regulations to effectuate that policy.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–83 effective Oct. 1, 1979, see section 12 of Pub. L. 96–83, set out as an Effective Date of 1979 Amendment note under section 401 of this title.

§ 412. Comptroller General's access to information from Administrator; rule making procedure

[*See main edition for text of* (a)]

(b) The Administrator shall, by regulation, require that formal meetings of the Office, as designated by him, for the purpose of developing procurement policies and regulations shall be open to the public, and that public notice of each such meeting shall be given not less than ten days prior thereto.

(As amended Pub. L. 96–83, § 9, Oct. 10, 1979, 93 Stat. 652.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–83 substituted "developing" for "establishing".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–83 effective Oct. 1, 1979, see section 12 of Pub. L. 96–83, set out as an Effective Date of 1979 Amendment note under section 401 of this title.

CHAPTER 8—FEDERAL GRANTS AND COOPERATIVE AGREEMENTS [NEW]

Sec.
501. Congressional findings and statement of purpose.
502. Definitions.
503. Use of procurement contracts by executive agencies.
504. Use of grant agreements by executive agencies.
505. Use of cooperative agreements by executive agencies.
506. Required and discretionary authorities.
507. Federal assistance program study; contents; consultations; report and recommendations.
508. Supplementary interpretative guidelines to promote required use of contracts, etc.
509. Use of multiple relationships for different components of jointly funded projects.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 20 section 1221e; title 42 section 3789b.

§ 501. Congressional findings and statement of purposes

(a) The Congress finds that—

(1) there is a need to distinguish Federal assistance relationships from Federal procurement relationships and thereby to standardize usage and clarify the meaning of the legal instruments which reflect such relationships;

(2) uncertainty as to the meaning of such terms as "contract", "grant", and "cooperative agreement" and the relationships they reflect causes operational inconsistencies, confusion, inefficiency, and waste for recipients of awards as well as for executive agencies; and

(3) the Commission on Government Procurement has documented these findings and concluded that a reduction of the existing inconsistencies, confusion, inefficiency, and waste is feasible and necessary through legislative action.

(b) The purposes of this chapter are—

(1) to characterize the relationship between the Federal Government and contractors, State and local governments, and other recipients in the acquisition of property and services and in the furnishing of assistance by the Federal Government so as to promote a better understanding of Federal spending and help eliminate unnecessary administrative requirements on recipients of Federal awards;

(2) to establish Government-wide criteria for selection of appropriate legal instruments to achieve uniformity in the use by the executive agencies of such instruments, a clear definition of the relationships they reflect, and a better understanding of the responsibilities of the parties;

(3) to promote increased discipline in the selection and use of types of contract, grant agreement, and cooperative agreements and to maximize competition in the award of contracts and encourage competition, where deemed appropriate, in the award of grants and cooperative agreements; and

(4) to require a study of the relationship between the Federal Government and grantees and other recipients in Federal assistance programs and the feasibility of developing a comprehensive system of guideline for the use of grant and cooperative agreements, and other forms of Federal assistance in carrying out such programs.

(Pub. L. 95–224, § 2, Feb. 3, 1978, 92 Stat. 3.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), in the original read "this Act", meaning Pub. L. 95–224, which enacted this chapter, repealed sections 1891 and 1892 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under this section and section 1891 of Title 42.

SHORT TITLE

Section 1 of Pub. L. 95–224 provided: "That this Act [which enacted this chapter, repealed sections 1891 and 1892 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under this section and section 1891 of Title 42] be cited as the 'Federal Grant and Cooperative Agreement Act of 1977'."

SAVINGS PROVISIONS

Section 10(b) of Pub. L. 95–224 provided that: "Nothing in this Act [see Short Title note above] shall be construed to render void or voidable any existing contract, grant, cooperative agreement, or other contract, grant, or cooperative agreement entered into up to one year after the date of enactment of this Act [Feb. 3, 1978]."

EXCEPTED TRANSACTIONS OR PROGRAMS; TERMINATION DATE OF AUTHORITY OF DIRECTOR OF OFFICE OF MANAGEMENT AND BUDGET

Section 10(d) of Pub. L. 95–224 provided that: "The Director of the Office of Management and Budget may except individual transactions or programs of any executive agency from the application of the provisions of this Act [see Short Title note above]. This authority shall expire one year after receipt by the Congress of the study provided for in section 8 of this Act [section 507 of this title]."

§ 502. Definitions

As used in this chapter, the term—

(1) "State government" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State, and any multi-State, regional, or interstate entity which has governmental functions;

(2) "local government" means any unit of government within a State, a county, municipality, city, town, township, local public authority, special district, intrastate district, council of governments, sponsor group representative organization, other interstate government entity, or any other instrumentality of a local government;

(3) "other recipient" means any person or recipient other than a State or local government who is authorized to receive Federal assistance or procurement contracts and includes any charitable or educational institution;

(4) "executive agency" means any executive department as defined in section 101 of title 5, a military department as defined in section 102 of title 5, an independent establishment as defined in section 104 of title 5 (except that it shall not include the General Accounting Office), a wholly owned Government corporation; and

(5) "grant or cooperative agreement" does not include any agreement under which only direct Federal cash assistance to individuals, a subsidy, a loan, a loan guarantee, or insurance is provided.

(Pub. L. 95-224, § 3, Feb. 3, 1978, 92 Stat. 4.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 503. Use of procurement contracts by executive agencies

Each executive agency shall use a type of procurement contract as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient—

(1) whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; or

(2) whenever an executive agency determines in a specific instance that the use of a type of procurement contract is appropriate.

(Pub. L. 95-224, § 4, Feb. 3, 1978, 92 Stat. 4.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 504. Use of grant agreements by executive agencies

Each executive agency shall use a type of grant agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever—

(1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity.

(Pub. L. 95-224, § 5, Feb. 3, 1978, 92 Stat. 4.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 505. Use of cooperative agreements by executive agencies

Each executive agency shall use a type of cooperative agreement as the legal instrument reflecting a relationship between the Federal Government and a State or local government or other recipient whenever—

(1) the principal purpose of the relationship is the transfer of money, property, services, or anything of value to the State or local government or other recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition, by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and

(2) substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the State or local government or other recipient during performance of the contemplated activity.

(Pub. L. 95-224, § 6, Feb. 3, 1978, 92 Stat. 5.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 506. Required and discretionary authorities

(a) Notwithstanding any other provision of law, each executive agency authorized by law to enter into contracts, grant or cooperative agreements, or similar arrangements is authorized and directed to enter into and use types of contracts, grant agreements, or cooperative agreements as required by this chapter.

(b) The authority to make contracts, grants, and cooperative agreements for the conduct of basic or applied scientific research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research shall include discretionary authority, when it is deemed by the head of the executive agency to be in furtherance of the objectives of the agency, to vest in such institutions or organizations, without further obligation to the Government, or on such other terms and conditions as deemed appropriate, title to equipment or other tangible personal property purchased with such funds.

(Pub. L. 95-224, § 7, Feb. 3, 1978, 92 Stat. 5.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 507 of this title.

§ 507. Federal assistance program study; contents; consultations; report and recommendations

The Director of the Office of Management and Budget, in cooperation with the executive agencies, shall undertake a study to develop a better understanding of alternative means of implementing Federal assistance programs, and to determine the feasibility of developing a

comprehensive system of guidance for Federal assistance programs. Such study shall include a thorough consideration of the findings and recommendations of the Commission on Government Procurement relating to the feasibility of developing such a system. The Director shall consult with and to the extent practicable, involve representatives of the executive agencies, the Congress, the General Accounting Office, and State and local governments, other recipients and other interested members of the public. The result of the study shall be reported to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate at the earliest practicable date, but in no event later than two years after February 3, 1978. The report on the study shall include (1) detailed descriptions of the alternative means of implementing Federal assistance programs and of the circumstances in which the use of each appears to be most desirable, (2) detailed descriptions of the basic characteristics and an outline of such comprehensive system of guidance for Federal assistance programs, the development of which may be determined feasible, and (3) recommendations concerning arrangements to proceed with the full development of such comprehensive system of guidance and for such administrative or statutory changes, including changes in the provisions of sections 502 through 506 of this title, as may be deemed appropriate on the basis of the findings of the study.

(Pub. L. 95-224, § 8, Feb. 3, 1978, 92 Stat. 5.)

§ 508. Supplementary interpretative guidelines to promote required use of contracts, etc.

The Director of the Office of Management and Budget is authorized to issue supplementary interpretative guidelines to promote consistent and efficient use of contract, grants agreement, and cooperative agreements as defined in this chapter.

(Pub. L. 95-224, § 9, Feb. 3, 1978, 92 Stat. 6.)

§ 509. Use of multiple relationships for different components of jointly funded projects

Nothing in this chapter shall require the establishment of a single relationship between the Federal Government and a State or local government or other recipient on a jointly funded project, involving funds from more than one program or appropriation where different relationships would otherwise be appropriate for different components of the project.

(Pub. L. 95-224, § 10(c), Feb. 3, 1978, 92 Stat. 6.)

CHAPTER 9—CONTRACT DISPUTES [NEW]

Sec.
601. Definitions.
602. Applicability of law.
(a) Executive agency contracts.
(b) Tennessee Valley Authority contracts.
(c) Foreign government or international organization contracts.
603. Maritime contracts.
604. Fraudulent claims.
605. Decision by contracting officer.
(a) Contractor claims.
(b) Review; performance of contract pending appeal.
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606. Contractor's right of appeal to board of contract appeals.
607. Agency boards of contracts appeals.
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(e) Decisions.
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608. Small claims.
(a) Accelerated disposition of appeals.
(b) Simplified rules of procedure.
(c) Time of decision.
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(f) Review of requisite amount in controversy.
609. Judicial review of board decisions.
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(b) Finality of board decision.
(c) Remand or retention of case.
(d) Consolidation.
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610. Subpena, discovery, and deposition.
611. Interest.
612. Payment of claims.
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(b) Monetary awards.
(c) Reimbursement.
(d) Tennessee Valley Authority.
613. Separability of provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 5 section 5108; title 28 sections 1491, 2401, 2414, 2517.

§ 601. Definitions

As used in this chapter—

(1) the term "agency head" means the head and any assistant head of an executive agency, and may "upon the designation by" the head of an executive agency include the chief official of any principal division of the agency;

(2) the term "executive agency" means an executive department as defined in section 101 of title 5, an independent establishment as defined by section 104 of title 5 (except that it shall not include the General Accounting Office), a military department as defined by section 102 of title 5, and a wholly owned Government corporation as defined by section 846 of title 31, the United States Postal Service, and the Postal Rate Commission;

(3) The [1] term "contracting officer" means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts

[1] So in original. Probably should not be capitalized.

and make determinations and findings with respect thereto. The term also includes the authorized representative of the contracting officer, acting within the limits of his authority;

(4) the term "contractor" means a party to a Government contract other than the Government;

(5) The [1] term "Administrator" means the Administrator for Federal Procurement Policy appointed pursuant to the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.];

(6) The [1] term "agency board" means an agency board of contract appeals established under section 607 of this title; and

(7) The [1] term "misrepresentation of fact" means a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(Pub. L. 95-563, § 2, Nov. 1, 1978, 92 Stat. 2383.)

REFERENCES IN TEXT

This chapter, referred to in text preceding par. (1), read in the original "this Act", meaning Pub. L. 95-563, which enacted this chapter, amended section 5108 of Title 5, Government Organization and Employees, section 1346, 1491, 2401, 2414, 2510, and 2517 of Title 28, Judiciary and Judicial Procedure, and section 724a of Title 31, Money and Finance, and enacted provisions set out as notes under this section. For complete classification of this Act to the Code, see Short Title note below and Tables.

The Office of Federal Procurement Policy Act, referred to in par. (5), is Pub. L. 93-400, Aug. 30, 1974, 88 Stat. 796, which is classified principally to chapter 7 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

EFFECTIVE DATE

Section 16 of Pub. L. 95-563 provided that: "This Act [see Short Title note below] shall apply to contracts entered into one hundred twenty days after the date of enactment [Nov. 1, 1978]. Notwithstanding any provision in a contract made before the effective date of this Act, the contractor may elect to proceed under this Act with respect to any claim pending then before the contracting officer or initiated thereafter."

SHORT TITLE

Section 1 of Pub. L. 95-563 provided: "That this Act [enacting this chapter, amending section 5108 of Title 5, Government Organization and Employees, sections 1346, 1491, 2401, 2414, 2510, and 2517 of Title 28, Judiciary and Judicial Procedure, and section 724a of Title 31, Money and Finance, and enacting provisions set out as notes under this section] may be cited as the 'Contract Disputes Act of 1978'."

§ 602. Applicability of law

(a) Executive agency contracts

Unless otherwise specifically provided herein, this chapter applies to any express or implied contract (including those of the nonappropriated fund activities described in sections 1346 and 1491 of title 28) entered into by an executive agency for—

(1) the procurement of property, other than real property in being;

(2) the procurement of services;

(3) the procurement of construction, alteration, repair or maintenance of real property; or,

(4) the disposal of personal property.

(b) Tennessee Valley Authority contracts

With respect to contracts of the Tennessee Valley Authority, the provisions of this chapter shall apply only to those contracts which contain a disputes clause requiring that a contract dispute be resolved through an agency administrative process. Notwithstanding any other provision of this chapter, contracts of the Tennessee Valley Authority for the sale of fertilizer or electric power or related to the conduct or operation of the electric power system shall be excluded from the chapter.

(c) Foreign government or international organization contracts

This chapter does not apply to a contract with a foreign government, or agency thereof, or international organization, or subsidiary body thereof, if the head of the agency determines that the application of the chapter to the contract would not be in the public interest.

(Pub. L. 95-563, § 3, Nov. 1, 1978, 92 Stat. 2383.)

§ 603. Maritime contracts

Appeals under paragraph (g) of section 607 of this title and suits under section 609 of this title, arising out of maritime contracts, shall be governed by chapter 20 or 22 of title 46 as applicable, to the extent that those chapters are not inconsistent with this chapter.

(Pub. L. 95-563, § 4, Nov. 1, 1978, 92 Stat. 2384.)

REFERENCES IN TEXT

Chapter 20 of title 46, referred to in text, was in the original a reference to the Act of Mar. 9, 1920 (41 Stat. 525, as amended), known as the Suits in Admiralty Act, which is classified generally to chapter 20 (§ 741 et seq.) of Title 46, Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 741 of Title 46 and Tables.

Chapter 22 of title 46, referred to in text, was in the original a reference to the Act of Mar. 3, 1925 (43 Stat. 1112, as amended), known as the Public Vessels Act, which is classified generally to chapter 22 (§ 781 et seq.) of Title 46 Shipping. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 46 and Tables.

§ 604. Fraudulent claims

If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim. Liability under this subsection [1] shall be determined within six years of the commission of such misrepresentation of fact or fraud.

(Pub. L. 95-563, § 5, Nov. 1, 1978, 92 Stat. 2384.)

[1] So in original. Probably should not be capitalized.

[1] So in original. Probably should be "section".

§ 605. Decision by contracting officer

(a) Contractor claims

All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this chapter. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding. The authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine. This section shall not authorize any agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

(b) Review; performance of contract pending appeal

The contracting officer's decision on the claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this chapter. Nothing in this chapter shall prohibit executive agencies from including a clause in government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

(c) Amount of claim; certification; notification; time of issuance; presumption

(1) A contracting officer shall issue a decision on any submitted claim of $50,000 or less within sixty days from his receipt of a written request from the contractor that a decision be rendered within that period. For claims of more than $50,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable.

(2) A contracting officer shall, within sixty days of receipt of a submitted certified claim over $50,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations promulgated by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

(4) A contractor may request the agency board of contract appeals to direct a contracting officer to issue a decision in a specified period of time, as determined by the board, in the event of undue delay on the part of the contracting officer.

(5) Any failure by the contracting officer to issue a decision on a contract claim within the period required will be deemed to be a decision by the contracting officer denying the claim and will authorize the commencement of the appeal or suit on the claim as otherwise provided in this chapter. However, in the event an appeal or suit is so commenced in the absence of a prior decision by the contracting officer, the tribunal concerned may, at its option, stay the proceedings to obtain a decision on the claim by the contracting officer.

(Pub. L. 95–563, § 6, Nov. 1, 1978, 92 Stat. 2384.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 606, 609, 611 of this title.

§ 606. Contractor's right of appeal to board of contract appeals

Within ninety days from the date of receipt of a contracting officer's decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.

(Pub. L. 95–563, § 7, Nov. 1, 1978, 92 Stat. 2385.)

§ 607. Agency boards of contracts appeals

(a) Establishment; consultation; Tennessee Valley Authority

(1) Except as provided in paragraph (2) an agency board of contract appeals may be established within an executive agency when the agency head, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least three members who shall have no other inconsistent duties. Workload studies will be updated at least once every three years and submitted to the Administrator.

(2) The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals for the Authority of an indeterminate number of members.

(b) Appointment of members; chairman; compensation

(1) Except as provided in paragraph (2), the members of agency boards shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law. Full-time members of agency boards serving as such on the effective date of this chapter shall be considered qualified. The chairman and vice chairman of each board shall be designated by the agency head from members so appointed. The chairman of each agency board shall receive compensation at a rate equal to that paid a GS–18 under the General Schedule contained in section 5332, of title 5, the vice chairman shall receive compensation at a rate equal to that paid a GS–17 under such General Schedule, and all other members shall

receive compensation at a rate equal to that paid a GS–16 under such General Schedule. Such positions shall be in addition to the number of positions which may be placed in GS–16, GS–17, and GS–18 of such General Schedule under existing law.

(2) The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to its agency board of contract appeals established in subsection (a)(2) of this section, and shall designate a chairman of such board. The chairman of such board shall receive compensation at a rate equal to the daily rate paid a GS–18 under the General Schedule contained in section 5332, of title 5, for each day he is engaged in the actual performance of his duties as a member of such board. All other members of such board shall receive compensation at a rate equal to the daily rate paid a GS–16 under such General Schedule for each day they are engaged in the actual performance of their duties as members of such board.

(c) Appeals; inter-agency arrangements

If the volume of contract claims is not sufficient to justify an agency board under subsection (a) of this section or if he otherwise considers it appropriate, any agency head shall arrange for appeals from decisions by contracting officers of his agency to be decided by a board of contract appeals of another executive agency. In the event an agency head is unable to make such an arrangement with another agency, he shall submit the case to the Administrator for placement with an agency board. The provisions of this subsection shall not apply to the Tennessee Valley Authority.

(d) Jurisdiction

Each agency board shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relative to a contract made by its agency, and (2) relative to a contract made by any other agency when such agency or the Administrator has designated the agency board to decide the appeal. In exercising this jurisdiction, the agency board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims.

(e) Decisions

An agency board shall provide to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, and shall issue a decision in writing or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

(f) Accelerated appeal disposition

The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is $50,000 or less. The accelerated procedure shall be applicable at the sole election of only the contractor. Appeals under the accelerated procedure shall be resolved, whenever possible, within one hundred and eighty days from the date the contractor elects to utilize such procedure.

(g) Review

(1) The decision of an agency board of contract appeals shall be final, except that—

(A) a contractor may appeal such a decision to the Court of Claims within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) the agency head, if he determines that an appeal should be taken, and with the prior approval of the Attorney General, transmits the decision of the board of contract appeals to the United States Court of Claims for judicial review, under section 2510 of title 28, within one hundred and twenty days from the date of the agency's receipt of a copy of the board's decision.

(2) Notwithstanding the provisions of paragraph (1), the decision of the board of contract appeals of the Tennessee Valley Authority shall be final, except that—

(A) a contractor may appeal such a decision to a United States district court pursuant to the provisions of section 1337 of title 28, within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) The Tennessee Valley Authority may appeal the decision to a United States district court pursuant to the provisions of section 1337 of title 28, within one hundred twenty days after the date of the decision in any case.

(h) Procedural guidelines

Pursuant to the authority conferred under the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.], the Administrator is authorized and directed, as may be necessary or desirable to carry out the provisions of this chapter, to issue guidelines with respect to criteria for the establishment, functions, and procedures of the agency boards (except for a board established by the Tennessee Valley Authority).

(i) Workload studies

Within one hundred and twenty days from November 1, 1978, all agency boards, except that of the Tennessee Valley Authority, of three or more full time members shall develop workload studies for approval by the agency head as specified in subsection (a)(1) of this section.

(Pub. L. 95–563, § 8, Nov. 1, 1978, 92 Stat. 2385.)

REFERENCES IN TEXT

For the effective date of this chapter, referred to in subsec. (b)(1), see section 16 of Pub. L. 95–563, set out as a note under section 601 of this title.

The Office of Federal Procurement Policy Act, referred to in subsec. (h), is Pub. L. 93–400, Aug. 30, 1974, 88 Stat. 796, which is classified principally to chapter 7 (§ 401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 401 of this title and Tables.

CODIFICATION

In subsec. (b)(1), "administrative law judges" was substituted for "hearing examiners" on authority of section 3 of Pub. L. 95–251, Mar. 27, 1978, 92 Stat. 184, which is set out as a note under section 3105 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 601, 603, 606, 609 of this title; title 28 section 1346.

§ 608. Small claims

(a) Accelerated disposition of appeals

The rules of each agency board shall include a procedure for the expedited disposition of any appeal from a decision of a contracting officer where the amount in dispute is $10,000 or less. The small claims procedure shall be applicable at the sole election of the contractor.

(b) Simplified rules of procedure

The small claims procedure shall provide for simplified rules of procedure to facilitate the decision of any appeal thereunder. Such appeals may be decided by a single member of the agency board with such concurrences as may be provided by rule or regulation.

(c) Time of decision

Appeals under the small claims procedure shall be resolved, whenever possible, within one hundred twenty days from the date on which the contractor elects to utilize such procedure.

(d) Finality of decision

A decision against the Government or the contractor reached under the small claims procedure shall be final and conclusive and shall not be set aside except in cases of fraud.

(e) Effect of decision

Administrative determinations and final decisions under this section shall have no value as precedent for future cases under this chapter.

(f) Review of requisite amount in controversy

The Administrator is authorized to review at least every three years, beginning with the third year after November 1, 1978, the dollar amount defined in subsection (a) of this section as a small claim, and based upon economic indexes selected by the Administrator adjust that level accordingly.

(Pub. L. 95-563, § 9, Nov. 1, 1978, 92 Stat. 2387.)

§ 609. Judicial review of board decisions

(a) Actions in United States Court of Claims; district court actions; time for filing

(1) Except as provided in paragraph (2), and in lieu of appealing the decision of the contracting officer under section 605 of this title to an agency board, a contractor may bring an action directly on the claim in the United States Court of Claims, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(2) In the case of an action against the Tennessee Valley Authority, the contractor may only bring an action directly on the claim in a United States district court pursuant to section 1337 of title 28, notwithstanding any contract provision, regulation, or rule of law to the contrary.

(3) Any action under paragraph (1) or (2) shall be filed within twelve months from the date of the receipt by the contractor of the decision of the contracting officer concerning the claim, and shall proceed de novo in accordance with the rules of the appropriate court.

(b) Finality of board decision

In the event of an appeal by a contractor or the Government from a decision of any agency board pursuant to section 607 of this title, notwithstanding any contract provision, regulation, or rules of law to the contrary, the decision of the agency board on any question of law shall not be final or conclusive, but the decision on any question of fact shall be final and conclusive and shall not be set aside unless the decision is fraudulent, or arbitrary, or capricious, or so grossly erroneous as to necessarily imply bad faith, or if such decision is not supported by substantial evidence.

(c) Remand or retention of case

In any appeal by a contractor or the Government from a decision of an agency board pursuant to section 607 of this title, the court may render an opinion and judgement and remand the case for further action by the agency board or by the executive agency as appropriate, with such direction as the court considers just and proper, or, in its discretion and in lieu of remand it may retain the case and take such additional evidence or action as may be necessary for final disposition of the case.

(d) Consolidation

If two or more suits arising from one contract are filed in the Court of Claims and one or more agency boards, for the convenience of parties or witnesses or in the interest of justice, the Court of Claims may order the consolidation of such suits in that court or transfer any suits to or among the agency boards involved.

(e) Judgments as to fewer than all claims

In any suit filed pursuant to this chapter involving two or more claims, counterclaims, cross-claims, or third-party claims, and where a portion of one such claim can be divided for purposes of decision or judgment, and in any such suit where multiple parties are involved, the court, whenever such action is appropriate, may enter a judgment as to one or more but fewer than all of the claims, portions thereof, or parties.

(Pub. L. 95-563, § 10, Nov. 1, 1978, 92 Stat. 2388.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 603 of this title; title 28 sections 1346, 2510.

§ 610. Subpena, discovery, and deposition

A member of an agency board of contract appeals may administer oaths to witnesses, authorize depositions and discovery proceedings, and require by subpena the attendance of witnesses, and production of books and papers, for the taking of testimony or evidence by deposition or in the hearing of an appeal by the agency board. In case of contumacy or refusal to obey a subpena by a person who resides, is found, or transacts business within the jurisdiction of a United States district court, the court, upon application of the agency board through the Attorney General; or upon application by the board of contract appeals of the Tennessee Valley Authority, shall have jurisdiction to

issue the person an order requiring him to appear before the agency board or a member thereof, to produce evidence or to give testimony, or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

(Pub. L. 95-563, § 11, Nov. 1, 1978, 92 Stat. 2388.)

§ 611. Interest

Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim pursuant to section 605(a) of this title from the contractor until payment thereof. The interest provided for in this section shall be paid at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board.

(Pub. L. 95-563, § 12, Nov. 1, 1978, 92 Stat. 2389.)

REFERENCES IN TEXT

Provisions of Public Law 92-41, referred to in text, which authorized the Secretary of the Treasury to fix interest rates for the Renegotiation Board, were contained in section 2(a)(3) of Pub. L. 92-41, which is classified to section 1215(b)(2) of Title 50, Appendix, War and National Defense.

§ 612. Payment of claims

(a) Judgments

Any judgment against the United States on a claim under this chapter shall be paid promptly in accordance with the procedures provided by section 724a of title 31.

(b) Monetary awards

Any monetary award to a contractor by an agency board of contract appeals shall be paid promptly in accordance with the procedures contained in subsection (a) of this section.

(c) Reimbursement

Payments made pursuant to subsections (a) and (b) of this section shall be reimbursed to the fund provided by section 724a of title 31 by the agency whose appropriations were used for the contract out of available funds or by obtaining additional appropriations for such purposes.

(d) Tennessee Valley Authority

(1) Notwithstanding the provisions of subsection (a) through (c) of this section, any judgment against the Tennessee Valley Authority on a claim under this chapter shall be paid promptly in accordance with the provisions of section 831h(b) of title 16.

(2) Notwithstanding the provisions of subsection (a) through (c), any monetary award to a contractor by the board of contract appeals for the Tennessee Valley Authority shall be paid in accordance with the provisions of section 831h(b) of title 16.

(Pub. L. 95-563, § 13, Nov. 1, 1978, 92 Stat. 2389.)

§ 613. Separability of provisions

If any provision of this chapter, or the application of such provision to any persons or circumstances, is held invalid, the remainder of this chapter, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

(Pub. L. 95-563, § 15, Nov. 1, 1978, 92 Stat. 2391.)